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January 25, 1993

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-265

Dear Ms. Searcy:

Transmitted herewith on behalf of United States Satellite Broadcasting Company, Inc. (USSB), permittee of a Direct Broadcast Satellite (DBS) System, are an original and four copies of its Comments in MM Docket No. 92-265 supporting the adoption of Rules and Regulations for implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 concerning Development of Competition and Diversity in Video Programming Distribution and Carriage.

Should there be any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Marvin Rosenberg
Marvin Rosenberg
Counsel for
United States Satellite
Broadcasting Company, Inc.

MR:ik
Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)
)
Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

MM Docket No. 92-265
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS

United States Satellite Broadcasting Company, Inc. ("USSB"), by its counsel, submits its Comments in the above-captioned proceeding and supports the adoption of Rules and Regulations that will implement Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("Act") in a manner which will enable multichannel video program providers to enter into arms-length negotiations with video program providers. In support whereof, it is respectfully stated as follows:

Preliminary Statement

USSB has an authorization to construct and launch a Direct Broadcast Satellite (DBS) System, and, presently, it intends to commence service in early 1994. USSB was one of the participants before Congress that supported the enactment of a program access provision within the Act. Pursuant to the direction in the legislation, the Commission is now engaged in determining the Rules and Regulations that should be adopted with regard to program access and carriage. USSB submits that the Act is clear in its

intent, it enumerates the factors which a satellite cable programming vendor may consider in distinguishing in price between CATV and other multichannel video program providers, and exclusivity may be permitted within a service area subject to a determination by the Commission that it is in the public interest, after considering the factors set forth in the Act. Accordingly, many of the questions presented by the Commission in its NPRM for consideration by commenters are, after careful analysis, answered by the Act itself.

Matters for Consideration

In its Report on the Act, the conferees stated that they expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging non-discriminatory prices to non-cable technologies. The Act is directed to both cable operators and satellite cable program providers in which a cable operator has an attributable interest. Thus, cable systems, regardless of whether there is an attributable ownership interest between the cable system and a program provider, are to be precluded from engaging in practices which would restrict or interfere with the ability of multichannel video program providers to negotiate in the market place with program providers. Moreover, in examining the relationship between a cable entity and a satellite cable program provider to determine whether there is an attributable interest, it would be insufficient to limit consideration to the Commission's benchmark 5 percent ownership interest. Because it is possible to utilize a variety of ownership

and control structures, it would be possible for a cable system to affect the business practices of a satellite cable program provider with a smaller percentage of voting ownership. Thus, the entire relationship between the cable operator and satellite cable program provider must be examined if a complaint is filed with the Commission.

In examining the elements of harm under Section 628, it is the ability of the multichannel video program provider to engage in arms-length negotiations with the programmers which must be considered. If the multichannel video program provider cannot obtain programming or cannot obtain it at a fair and non-discriminatory price, then the multichannel video program provider must allege the existence of sufficient factors which are cognizable by the Commission under the Act for the Commission to consider the complaint.

While the Commission enumerates several approaches that could be taken to consider differences in the price charged by a programmer to cable operators and to multichannel video program providers, the Act itself is clear that there is to be no discrimination in price between a satellite cable program provider's price to cable and to multipoint video program providers. In Section 628(c)(2)(B), the Act specifically permits several factors to be taken into consideration by the satellite cable program provider in determining if a distinction in price is warranted. Thus, if a multichannel video program provider alleges that there is discrimination in price, the burden should shift to the programmer to justify any price distinction on the basis of

those specific factors set forth in Section 628(c)(2)(B) of the Act.

It is clear that exclusivity may be obtained by a cable system or a multichannel program provider within their service areas if the Commission determines that it is in the public interest. Since the Act sets forth the factors that the Commission is to consider in making the public interest determination, the Rules and Regulations adopted by the Commission must include these criteria to be consistent with the Act. It would be premature to provide for other factors or to set a limit on duration before there is an opportunity to determine the effectiveness of the specific provisions in the Act.

As to establishing an effective date for program contracts to be considered by the Commission, the Act itself imposes an effective date for exclusivity. Subsection (h) grandfathers exclusivity provisions in contracts entered into prior to June 1, 1990. It would be reasonable to apply the date of enactment of the Act to the consideration of the other provisions in Section 628.

USSB supports the Commission's intent to utilize its ADR procedures to resolve complaints on program access. The ADR process could serve to expedite the resolution of complaints, and, therefore, the ADR procedures should be initially implemented. If ADR does not prove effective, the Commission should then consider alternatives.

USSB submits that the Commission should clearly limit any Rules and Regulations adopted pursuant to Section 616 to acts that are coercive or unreasonable. Thus, in arms-length negotiations,

a cable operator or multichannel video program provider should be permitted to bargain for and to obtain a financial interest in a program service or exclusivity against competitors serving the same area. Such factors as financial interests and exclusivity are necessary to encourage the development of new program sources.

Conclusion

USSB submits that, to the extent possible, the market place for program acquisition should be permitted to freely function. The Commission should adopt only those limited Rules and Regulations which are necessary to provide adequately for the effective implementation of the practices directly addressed by the Act.

Respectfully submitted,

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

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